

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

NEW YORK STATE BANKING DEPARTMENT

NEW YORK, NEW YORK

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In the Matter of )  
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BANK OF TOKYO-MITSUBISHI UFJ TRUST COMPANY )  
NEW YORK, NEW YORK )

(INSURED STATE NONMEMBER BANK) )  
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ORDER TO  
CEASE AND DESIST

Docket No. FDIC-06-184b

Bank of Tokyo-Mitsubishi UFJ Trust Company, New York, New York, a New York banking corporation, ("Insured Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices or violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), and section 39 of the New York Banking Law ("NYBL"), having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC"), and with counsel for the New York State Banking Department ("Department"), dated December 13, 2006, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Insured Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Department.

The FDIC and the Department considered the matter and determined that they had reason to believe that the Insured Bank had engaged in unsafe or unsound banking practices and had committed violations of law and/or regulations. The FDIC and the Department, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Insured Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns cease and desist from the following unsafe or unsound banking practices or violations of law and/or regulation:

operating in violation of sections 326.8(b)(1) and 326.8(c)(1) of the FDIC Rules and Regulations, 12 C.F.R. § 326.8(b)(1) and 12 C.F.R. § 326.8(c)(1), as more fully described on page 19 in the FDIC's Report of Examination dated May 15, 2006.

IT IS FURTHER ORDERED, that the Insured Bank, its institution-affiliated parties, and its successors and assigns, take affirmative action as follows:

1. (a) Within 30 days from the effective date of this ORDER, the Insured Bank shall obtain the services of an independent consultant ("BSA/AML Consultant"), acceptable to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") and the New York State Banking Department Superintendent of Banks ("Superintendent"), who is knowledgeable in the areas of compliance with the requirements of the Bank Secrecy Act ("BSA"), 31 U.S.C. § 5311 *et seq.*, and the implementing regulations promulgated thereunder by the Department of the Treasury and the regulations of the Office of Foreign Assets Control ("OFAC"), 31 C.F.R. Part 500.

(b) Within 60 days from the engagement of the BSA/AML Consultant, such BSA/AML Consultant shall review the Insured Bank's policies, procedures and operations for BSA/AML and OFAC compliance and the deficiencies identified in the Report of Examination and make written recommendations ("Review Recommendations") to the Board of Directors of the Insured Bank (the "Board") to revise, establish and enhance the Insured Bank's BSA/AML and OFAC policies, procedures and operations. Such Review Recommendations also shall include policies, procedures and operations which may include, without limitation, the establishment of the BSA/AML program as referenced in Paragraph 4 of the ORDER, to improve the Insured Bank's internal controls to assure ongoing compliance.

(c) Within 30 days of delivery of the Review Recommendations from the BSA/AML Consultant to the Board, the Board shall provide a copy of the Review Recommendations to the Regional Director and the Superintendent, and shall review for adoption said Review Recommendations, which actions shall be noted in the minutes of the meeting of the Board.

(d) If the Board fails to adopt any of the Review Recommendations, the Board shall provide to the Regional Director and the Superintendent a written comprehensive explanation of its rationale for failing to do so.

2. Within 120 days of the effective date of this ORDER, the Insured Bank shall comply in all material respects with the BSA and its related rules and regulations.

3. Within 120 days of the effective date of this ORDER, the Insured Bank shall correct all violations of law cited on page 19 of the FDIC's Report of Examination dated May 15, 2006. In addition, the Insured Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

4. Within 120 days of the effective date of this ORDER, the Insured Bank shall develop, adopt and implement a written BSA/AML compliance program, as required by the applicable provisions of section 326.8(b)(1) of the FDIC's Rules and Regulations, 12 C.F.R. § 326.8(b)(1), designed to, among other things, ensure and maintain compliance by the Insured Bank with the BSA and the rules and regulations issued pursuant thereto. The program shall ensure that clear and comprehensive BSA compliance reports are provided to the Board on a monthly basis. Such program and its implementation shall be in a manner acceptable to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations of the Insured Bank. At a minimum, the program shall:

(a) Establish a system of internal controls designed to ensure compliance with the BSA and the rules and regulations issued pursuant thereto, including policies and procedures to detect and monitor all transactions to ensure that they are not being conducted for illegitimate purposes and that the Insured Bank is in full compliance with all applicable laws and regulations.

(b) Provide for independent testing of compliance with the BSA, all applicable rules and regulations related to the BSA, and the reporting of suspicious transactions required to be reported pursuant to Part 353 of the FDIC's Rules and Regulations, 12 C.F.R. Part 353 and 3 N.Y.C.R.R. Part 300. The independent testing (which may be performed by internal audit) shall be conducted on an annual basis and in accordance with the procedures described in the FFIEC Bank Secrecy Act / Anti-Money Laundering Examination Manual.

(c) Provide for written reports which document the testing results and provide recommendations for improvement. Such reports shall be presented to the Board.

(d) Ensure that the Insured Bank's BSA compliance program is managed by a **qualified officer** who is supported by adequate staffing levels and resources, invested with

appropriate authority, and has responsibility for all BSA compliance and related matters, including, without limitation:

(i) the timely, accurate and complete reporting to law enforcement and supervisory authorities of unusual or suspicious activity that potentially exposes the Insured Bank to financial loss, increased expenses, or reputational risk, or known or suspected criminal activity perpetrated against or involving the Insured Bank by filing Suspicious Activity Reports (“SARs”); and

(ii) monitoring the Insured Bank's compliance and ensuring that full and complete corrective action is taken with respect to previously identified violations and deficiencies.

(e) Provide and document training by competent staff and/or independent contractors of all board members and all appropriate personnel, including, without limitation, tellers, customer service representatives, lending officers, private and personal banking officers and all other customer contact personnel, in all relevant or appropriate aspects of regulatory and internal policies and procedures related to the BSA, with a specific concentration on accurate recordkeeping, form completion and the detection and reporting of known and/or suspected criminal activity. Training shall be updated on a regular basis to ensure that all personnel are provided with the most current and up to date information.

(f) The Insured Bank’s BSA Officer shall attend periodic conference-based training that covers, among other things, BSA/AML best practices and current BSA/AML issues.

5. Within 30 days from the effective date of this ORDER, the BSA Officer shall develop a plan to review all high-risk accounts and high-risk transactions (“Transaction Review”), including but not limited to the Insured Bank’s large currency transaction reports

("CTRs"), cash purchases of monetary instruments, wire transfer activity, and foreign exchange services for the six-month period immediately preceding the effective date of this ORDER (the "Transaction Review Period"), and shall prepare and file any additional CTRs and SARs necessary based upon the review. Based upon the results of the review, the Regional Director and the Superintendent may extend the Transaction Review Period if necessary.

6. (a) Within 10 days of preparing a plan for the Transaction Review, but prior to commencement of the Transaction Review, the Insured Bank shall submit to the Regional Director and the Superintendent a written plan for approval that sets forth:

(i) The scope of the Transaction Review, including the types of accounts and transactions to be reviewed;

(ii) the methodology for conducting the Transaction Review, including any sampling procedures to be followed;

(iii) the expertise and resources to be dedicated to the Transaction Review;

(iv) the anticipated date of completion of the Transaction Review;  
and

(v) a commitment that any interim reports, draft reports or workpapers associated with the Transaction Review will be made available to the Regional Director and the Superintendent upon request.

(b) On completion of the reviews required pursuant to the paragraphs above, the Insured Bank shall submit the written findings of the review and copies of any additional SARs and CTRs filed to the Regional Director and the Superintendent.

7. Throughout the Transaction Review, the Insured Bank shall ensure that all matters or transactions required to be reported that have not previously been reported are reported in accordance with applicable rules and regulations.

8. Documentation supporting any determination made pursuant to the above paragraph 5 shall be retained in the Insured Bank's records for such period of time as may be required by any applicable rules or regulations.

9. Within 120 days of the effective date of this ORDER, the Insured Bank shall develop, adopt and implement a written customer due diligence program. Such program and its implementation shall be in a manner acceptable to the Regional Director and the Superintendent, including provisions to correct all the internal control deficiencies noted specifically on pages 11 through 18 in the FDIC's Report of Examination dated May 15, 2006, as determined at subsequent examinations and/or visitations of the Insured Bank. At a minimum, the customer due diligence program shall provide for the following:

(a) A risk focused assessment of the customer base of the Insured Bank to determine the appropriate level of enhanced due diligence necessary for those categories of customers that the Insured Bank has reason to believe pose a higher risk of illicit activities at or through the Insured Bank. "Higher Risk" customers include politically exposed persons or "PEPs" (as such term is defined in the FFIEC BSA/AML Examination Manual).

(b) For those customers whose transactions require enhanced due diligence, procedures to:

(i) determine the appropriate documentation necessary to confirm the identity and business activities of the customer;

- (ii) understand the normal and expected transactions of the customer;

and

- (iii) reasonably ensure the identification and timely, accurate and complete reporting of known or suspected criminal activity against or involving the Insured Bank to law enforcement and supervisory authorities, as required by the suspicious activity reporting provisions of Part 353 of the FDIC's Rules and Regulations, 12 C.F.R. Part 353, and 3 N.Y.C.R.R. Part 300.

- (c) For those customers identified as PEPs, due diligence procedures to:

- (i) identify the accountholder and beneficial owner;

- (ii) obtain information directly from the individual accountholder regarding PEP status;

- (iii) identify the accountholder's country of residence;

- (iv) obtain information regarding employment, sources of income or other sources of funds;

- (v) obtain information on immediate family members or close associates having authority over the account; and

- (vi) determine the purpose of the account, the expected volume and nature of account activity, and verify information with information in public databases.

- (d) Action to be taken when accountholders are suspected of using their accounts to engage in suspicious activity or where the Insured Bank is in noncompliance with FinCEN requirements including, where appropriate, steps to close such accounts consistent with applicable law; and

(e) Procedures for changing lower risk customer classifications to higher risk, based upon suspicious activity monitoring processes and due diligence procedures.

10. Following the effective date of this ORDER, the Board or a special committee appointed by the Board shall monitor and confirm the completion of actions taken by management to comply with the terms of this ORDER. All actions taken by the Board pursuant to this ORDER shall be duly noted in the minutes of its meetings. The Board or special committee shall receive reports from the qualified officer appointed in paragraph 4(d) regarding compliance with the BSA and Parts 326 and 353, at least monthly, and if a special committee is appointed, the committee shall report to the Board at every meeting.

11. On or before the 20<sup>th</sup> day of each month following the effective date of this ORDER, the Insured Bank shall furnish written progress reports ("Progress Reports") to the Regional Director and the Superintendent detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Progress Reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Superintendent have released the Insured Bank in writing from making further reports.

12. Following the effective date of this ORDER, the Insured Bank shall send to its parent holding company the ORDER or otherwise furnish a description of this ORDER in conjunction with the Insured Bank's next communication with such parent holding company. The description shall fully describe the ORDER in all material respects.

13. It is expressly and clearly understood that nothing herein constitutes, nor shall the Insured Bank contend that it constitutes, a waiver of any right, power, or authority of any other

representatives of the United States or agencies thereof, including the Department of Justice (or of New York or any agencies or departments thereof), to bring other actions deemed appropriate.

This ORDER shall become effective upon the date of its issuance by the FDIC and the Department. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC and the Department.

Pursuant to delegated authority.

Dated at San Francisco, California, this 15<sup>th</sup> day of December, 2006.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: John F. Carter  
John F. Carter *vfw*  
Regional Director  
Division of Supervision and Consumer Protection  
San Francisco Region  
Federal Deposit Insurance Corporation

NEW YORK STATE BANKING DEPARTMENT

By: David Fredsall  
David Fredsall  
Deputy Superintendent  
New York, NY